

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

In the Matter of:

Protective Parking Service Corporation
d/b/a Lincoln towing Service,
Respondent.

Docket No. 92 RTV-R Sub 17
100139 MC

Hearing on fitness to hold a Commercial
Vehicle Relocator's License pursuant to
Section 401 of the Illinois Commercial
Relocation of Trespassing Vehicles Law,
625 ILCS 5/18a-401.

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PLEASE TAKE NOTICE that on July 16, 2018, I caused to be filed with the Director of Processing, Transportation Division, Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois 62701, **BRIEF ON EXCEPTIONS OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION**, a copy of which is hereby served upon you.

CERTIFICATE OF SERVICE

I hereby certify under penalties of perjury as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure that a copy of the attached **BRIEF ON EXCEPTIONS OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION**, was sent via electronic mail to the above listed persons on July 16, 2018.



Azeema N. Akram

STATE OF ILLINOIS

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**BRIEF ON EXCEPTIONS OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

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Relocation of Trespassing Vehicles Law,	:	
625 ILCS 5/18a-401.	:	

**BRIEF ON EXCEPTIONS OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

NOW COMES the Staff of the Illinois Commerce Commission ("Staff"), by and through its attorneys, Martin W. Burzawa and Azeema N. Akram, pursuant to the direction of the Administrative Law Judge ("ALJ") and 83 Ill. Adm. Code 200.830, and for its Brief on Exceptions ("BOE") states as follows:

I. INTRODUCTION

On July 2, 2018, Chief ALJ Latrice Kirkland-Montaque entered a Proposed Order ("ALJPO") in the above-captioned fitness hearing of Protective Parking Service Corporation d/b/a Lincoln Towing Service ("Respondent"). In the ALJPO, the ALJ recommended that the Commission find Respondent "fit, willing, and able to perform commercial relocation in intrastate commerce within the State of Illinois under the Illinois Commercial Relocation of Trespassing Vehicles Law." ALJPO, pg. 2. The ALJ also recommended that Respondent's Commercial Vehicle Relocator's License "expire two

years from the date of this Order.” *Id.*

In accordance with Section 200.830 of the Commission’s Rules of Practice, the ALJ allowed the parties to file exceptions to the Proposed Order and replies thereto within fourteen (14) days and seven (7) days, respectively.

II. SUMMARY OF EXCEPTIONS

The ALJPO fails to consider the full record and applicable law in this proceeding. The ALJPO limits its consideration of the record to testimonial evidence and fails to consider Staff’s exhibits as supplements to the testimonial evidence as well as independent sources of evidence. The ALJPO incompletely identifies the issue presented in the hearing and incompletely identifies the applicable law and Administrative Rules. Consequently, the ALJPO’s legal analysis fails to address a significant number of issues in this proceeding. Finally, the conclusions reached in the ALJPO are erroneous and unsupported by the record.

Staff suggests specific replacement language on each of these statements, findings of fact, or rulings of law that considers the entirety of the record and applies the appropriate law to the entirety of the record, which would result in a complete recommendation to the Commission. Finally, Staff offers minor technical corrections as noted below.

III. EXCEPTIONS

A. Issue Presented [I.]¹

The ALJPO states that the sole issue in this case is “whether [Respondent] is fit, willing and able to perform the service of a commercial vehicle relocater and to conform to the provisions of the Illinois Commercial Relocation of Trespassing Vehicles Law and the Commission’s Administrative Rules.” ALJPO, pg. 2. The ALJPO does not accurately reflect the directive of the Commission’s Order initiating this proceeding in accordance with the Illinois Commercial Relocation of Trespassing Vehicles Law (“ICRTVL”).

Section 401 of the ICRTVL provides that “[t]he Commission may at any time during the term of the license make inquiry into the management, conduct of business, or otherwise to determine that the provisions of this Chapter 18A and the regulations of the Commission promulgated thereunder are being observed.” 625 ILCS 5/18a-401. Pursuant to this statutory authority, the Commission issued its February 24, 2016 order and initiated this proceeding. 2-24-2016 Order, pg. 1.

A necessary component to determine Respondent’s fitness to hold a relocater’s license is the Commission’s *inquiry* into Respondent’s business operations and *determination* whether Respondent is complying with the ICRTVL and Commission’s Administrative Rules (“Administrative Rules”).

Staff respectfully requests striking the existing language and inserting the following replacement language to the “**ISSUE PRESENTED**” section of the ALJPO in order to fully identify the issue and the Commission’s statutory authority in this proceeding:

¹ Where applicable, the section(s) of the ALJPO at issue is indicated in brackets [].

I. ISSUE PRESENTED

This case concerns the fitness of Lincoln to hold a relocater's license in the State of Illinois under the Illinois Commercial Relocation of Trespassing Vehicles Law ("ICRTVL"), 625 ILCS 5/ et seq., and the Commission's Administrative Rules ("Rules"), 92 Ill. Adm. Code 1710.10 et seq. Pursuant to Section 401 of ICRTVL, the Commission may at any time during the term of the license make inquiry into the management, conduct of business, or otherwise determine that the provisions of the ICRTVL and the Rules are being observed.

B. Applicable Law [I.A. and I.B.]

The ALJPO's recitation of the applicable law in this fitness hearing excludes a significant number of statutory provisions, administrative rules, and case law necessary for the Commission to inquire into Respondent's business and determine whether it has observed the ICRTVL and Administrative Rules. The ALJPO includes only Section 401 of the ICRTVL and Section 1710.22 of the Administrative Rules. No enforcement provisions and no citations to any ICRTVL provisions or Administrative Rules relevant to the facts discovered in this proceeding are listed.

The "**APPLICABLE LAW**" section of the ALJPO fails to include all relevant law in this proceeding and is, therefore, incomplete. Staff respectfully requests striking the existing language and inserting the following replacement language to this section of the ALJPO:

II. APPLICABLE LAW

Pursuant to Section 401 of the ICRTVL, 625 ILCS 5/18a-401, the Commission may at any time during the term of the license make inquiry into the management, conduct of business, or otherwise determine that the provisions of the ICRTVL and the Commission's Administrative Rules, 92 Ill. Adm. Code 1710.10 et seq., are being observed.

Section 401 of the ICRTVL provides that "the Commission may at any time during the term of the license make inquiry into the management, conduct of business, or otherwise determine that the provisions of the ICRTVL and the Commission's Administrative Rules, 92 Ill. Adm. Code 1710.10 et seq., are being observed." 625 ILCS 5/18a-401. The plain language of section 401 grants the Commission the authority to determine whether evidence concerning the management and conduct of business of a relocator establishes that the relocator violated the ICRTVL and the Commission's Rules. The authority to make inquiry into the management, conduct of business, or otherwise determine that the provisions of the ICRTVL and the Commission's Rules are being observed necessarily includes the authority to actually make that determination. Not only is this plain in the statutory language, but without the necessary implication that the Commission is authorized to find that a violation occurred, the section would be meaningless. In other words, since the Commission, "an administrative agency, has the authority to revoke a professional license, it is axiomatic that the agency may determine whether grounds for revocation exist." *Rasky v. Dep't of Registration & Ed.*, 87 Ill.App.3d 580, 585, 410 N.E.2d 69, 75 (1st Dist. 1980). Accordingly, the Commission has the authority to weigh the evidence adduced at a fitness hearing and make a determination whether the evidence establishes violations of the ICRTVL and the Commission's Administrative Rules.

Section 101 of the ICRTVL vests enforcement authority in the Commission "to supervise and regulate the commercial removal of trespassing vehicles from private property, and the subsequent relocation and storage of such vehicles in such manner as to fairly distribute rights and responsibilities among vehicle owners, private property owners and commercial vehicle relocators." 625 ILCS 5/18a-101. The Commission's enforcement powers and procedures, contained in Article VII of subchapter 1 of the Illinois Commercial Transportation Law ("ICTL"), are adopted by incorporation in the ICRTVL. 625 ILCS 5/18a-307; 625 ILCS 5/18c-1701 et seq. The Commission's jurisdiction to regulate commercial vehicle relocators ("relocators") extends to their employees and agents as well. 625 ILCS 5/18a-200(1).

A business entity operating as a relocator is ultimately responsible for the entity's compliance with the ICRTVL and the Rules. The ICTL provides that the act or omission of any officer, employee, or agent within the scope of such person's office, employment or agency is deemed the act or omission of the business entity. 625 ILCS 5/18c-1701.

The ICRTVL specifies enumerated "unlawful practices" for any relocator to engage in. 625 ILCS 5/18a-300. A relocator's failure to comply with the ICRTVL, Commission regulations, and orders constitutes a

violation of the ICRTVL. 625 ILCS 5/18a-307; 625 ILCS 5-18c- 1701. Several of these unlawful practices are listed below.

A relocator is prohibited from employing or using the services of an operator who does not have a valid, current operator's employment permit. It shall be unlawful for any commercial vehicle relocater "[t]o employ as an operator, or otherwise so use the services of, any person who does not have at the commencement of employment or service, or at any time during the course of employment or service, a valid, current operator's employment permit, or temporary operator's employment permit issued in accordance with Sections 18a-403 or 18a-405 of this Chapter. 625 ILCS 5/18a-300(2).

A relocater shall not relocate a vehicle without first obtaining the required authorization. No vehicle shall be relocated from private property without express, written authorization from the property owner, lessee, or agent in conformance with Section 1710.91. 92 Ill. Adm. Code 1710.41.

A relocater has no authorization relocate trespassing vehicles from a property until the Commission has a copy of a contract between the relocater and the owner of the property from which the relocater will tow improperly parked vehicles. No authorization to tow or contract shall be effective until a completed copy of the Commission's Relocator Contract Summary form covering the authorization or contract has been electronically filed with and accepted by the Commission. 92 Ill. Adm. Code 1710.91(f)(1).

Two or more relocators cannot be authorized to relocate trespassing vehicles from the same property at the same time. Only one authorization to tow or contract shall be in effect for any lot at any time. No other authorization or contract shall become effective until the prior authorization has been cancelled and notice of cancellation is filed with the Commission. 92 Ill. Adm. Code 1710.91(f)(2). It is the responsibility of the relocater to file a notice of cancellation with the Commission when a contract has been terminated between the relocater and the property owner. 92 Ill. Adm. Code 1710.91(f)(4).

A contract filed with the Commission must specify whether the relocater is authorized to relocate trespassing vehicles on a patrol basis, or on a call basis (upon being contacted by a property owner). Relocator Contract Summaries shall be filed electronically with the Commission. Summaries shall state whether trespassing vehicles will be removed from the property on a patrol basis or only when contacted by the property owner, lessee or agent. When a contract permits removal of trespassing vehicles by both a property owner's request and a patrol basis, the relocater shall file that contract as a patrol contract. When one authorization to tow applies to

multiple parking lot locations, each address shall be filed electronically with the Commission. 92 Ill. Adm. Code 1710.91(f)(3).

C. Evidence [III.]

1. Staff's Evidence [III.B.]

The ALJPO fails to consider Staff's exhibits as supplements to the testimonial evidence as well as independent sources of evidence, thereby failing to take into consideration the entirety of the record. The failure to consider the entirety of the record results in the ALJPO's error in concluding that there is "a discrepancy of 320 tows between the tows cited in Staff's post hearing brief (831) and the count of tows supported by the testimony of Sergeant Sulikowski (511)." ALJPO, pg. 18. Specifically, the ALJPO makes the following errors and omissions:

1. The ALJPO notes one (1) tow occurred from 344 N. Canal. The entirety of the evidence shows two (2) tows occurred. Staff's Ex. J (Protective Parking 24-hour tow reports), pgs. 142, 276.
2. The ALJPO fails to include one (1) tow from 1041 Harding. Staff's Ex. J, pg. 41.
3. The ALJPO notes one (1) tow occurred from 1801 N. St. Louis Ave. The entirety of the evidence shows three (3) tows occurred. Staff's Exhibit J, pgs. 70, 261, 267.
4. The ALJPO fails to include one (1) tow from 1919 N. Cicero. Staff's Ex. J, pg. 136.
5. The ALJPO fails to include eight (8) tows from 2002 S. Wentworth. Staff's Ex. J, pgs. 127, 139, 159, 181, 187, 194, 198, 272.

6. The ALJPO fails to consider one (1) tow from 2201 S. Halsted stating that MCIS showed prior overlapping contract dates. Regardless of prior overlapping contracts, MCIS shows that Protective Parking did not have a contract on the date of the tow. Staff's Ex. B, pg. 20; Staff's Ex. J, pg. 45.
7. The ALJPO fails to consider six (6) tows from 2600 S. Michigan stating that MCIS showed prior overlapping contract dates. Regardless of prior overlapping contracts, MCIS shows that Protective Parking did not have a contract on the dates of the tows. Staff's Ex. B, pg. 25; Staff's Ex. J, pgs. 209, 234, 270, 271, 276.
8. The ALJPO fails to include five (5) tows from 2734 S. Wentworth. Staff's Ex. J, pgs. 90, 122, 195, 253, 258.
9. The ALJPO notes one (1) tow occurred from 2801 N. Linder Ave. The entirety of the evidence shows two (2) tows occurred. Staff's Ex. J, pgs. 262, 268.
10. The ALJPO fails to include one (1) tow from 4000 W. Grand. Staff's Ex. J, pg. 35.
11. The ALJPO fails to include four (4) tows from 4032 W. Armitage. Staff's Ex. J, pgs. 35, 36, 94.
12. The ALJPO fails to include two (2) tows from 4645 W. Belmont. Staff's Ex. J, pgs. 103, 271.
13. The ALJPO fails to include five (5) tows from 5000 W. Madison. Staff's Ex. J, pgs. 98, 196, 209, 234, 238.

14. The ALJPO fails to include one (1) tow from 5200 W. North. Staff's Ex. J, pg. 37.
15. The ALJPO notes one (1) tow occurred from 7118 W. Grand. The entirety of the evidence shows three (3) tows occurred. Staff's Ex. J, pg. 230.
16. The ALJPO fails to include four (4) tows from 223 N. Custer. Staff's Ex. K, pgs. 291, 313, 347, 424.
17. The ALJPO fails to include three (3) tows from 1415 W. Morse. Staff's Ex. K, pgs. 33, 370, 427.
18. The ALJPO notes one (1) tow occurred from 1730 W. Terra Cotta Place. The entirety of the evidence shows three (3) tows occurred. Staff's Ex. K, pg. 560, 625, 643.
19. The ALJPO notes eleven (11) tows occurred from 2001 W. Devon. The entirety of the evidence shows nineteen (19) tows occurred. Staff's Ex. K, pgs. 6, 18, 37, 60, 72, 95, 115, 130, 132, 143, 153, 171, 244, 326.
20. The ALJPO fails to include one (1) tow from 2245 N. Halsted. Staff's Ex. K, pg. 13.
21. The ALJPO fails to include two (2) from 2454 W. Peterson. Staff's Ex. K, pgs. 429, 506.
22. The ALJPO notes forty-three (43) tows occurred from 2801 W. Devon. The entirety of the evidence shows seventy-eight (78) tows occurred. Staff's Ex. K, pgs. 24, 61, 62, 63, 67, 85, 117, 120, 153, 154, 164, 19, 199, 224, 227, 239, 242, 243, 265, 266, 267, 269, 301, 324, 329, 338, 348, 374, 380, 383,

384, 404, 413, 419, 432, 436, 441, 442, 443, 447, 453, 457, 461, 464, 472, 473, 477, 558, 565, 598.

23. The ALJPO fails to include two (2) tows from 2828 N. Broadway. Staff's Ex. K, pgs. 56, 339.
24. The ALJPO notes twenty-four (24) tows occurred from 3620 N. Clark. The entirety of the evidence shows thirty-four (34) tows occurred. Staff's Ex. K, pgs. 21, 61, 91, 150, 225, 227, 231, 284, 285, 380, 402, 408, 414, 452, 454, 475, 489, 490, 544, 574, 576, 595, 609.
25. The ALJPO notes four (4) tows occurred from 3700 N. Broadway. The entirety of the evidence shows eight (8) tows occurred. Staff's Ex. K, pgs. 9, 46, 138, 496, 574, 631.
26. The ALJPO notes one (1) tow occurred from 3923 N. Clarendon. The entirety of the evidence shows four (4) tows occurred. Staff's Ex. K, pgs. 128, 143, 463, 494.
27. The ALJPO notes nineteen (19) tows occurred from 4102 N. Sheridan. The entirety of the evidence shows twenty-three (23) tows occurred. Staff's Ex. K, pgs. 11, 14, 136, 140, 148, 172, 174, 184, 211, 238, 278, 296, 315, 358, 421, 455, 535, 650, 658, 662, 668.
28. The ALJPO fails to include one (1) tow from 4420 N. Winchester. Staff's Ex. K, pg. 349.
29. The ALJPO notes five (5) tows occurred from 5440 N. Clark. The entirety of the evidence shows ten (10) tows occurred. Staff's Ex. K, pgs. 58, 66, 109, 195, 519, 560, 601, 628.

30. The ALJPO notes three (3) tows occurred from 5501 N. Kedzie. The entirety of the evidence shows six (6) tows occurred. Staff's Ex. K, pgs. 541, 542, 597, 610.
31. The ALJPO notes five (5) tows occurred from 5623 N. Clark. The entirety of the evidence shows six (6) tows occurred. Staff's Ex. K, pgs. 59, 266, 365, 377, 441, 476.
32. The ALJPO notes four (4) tows occurred from 5713 N. Kenmore. The entirety of the evidence shows five (5) tows occurred. Staff's Ex. K, pgs. 31, 55, 99, 119, 140.
33. The ALJPO fails to include one (1) tow from 5853 W. Artesian. Staff's Ex. K, pg. 574.
34. The ALJPO notes thirty (30) tows occurred from 6105 N. Broadway. The entirety of the evidence shows forty-seven (47) tows occurred. Staff's Ex. K, pgs. 31, 55, 99, 119, 140. Staff's Ex. K, pgs. 18, 19, 23, 67, 77, 89, 95, 96, 105, 127, 130, 146, 170, 174, 190, 197, 238, 296, 299, 317, 326, 358, 375, 385, 401, 414, 418, 424, 431, 442, 497, 502, 529, 560, 587, 609.
35. The ALJPO notes two (2) tows occurred from 6550 N. Sheridan. The entirety of the evidence shows three (3) tows occurred. Staff's Ex. K, pgs. 3, 18, 22.
36. The ALJPO notes six (6) tows occurred from 6700 N. Greenview. The entirety of the evidence shows ten (10) tows occurred. Staff's Ex. K, pgs. 6, 59, 82, 303, 403, 528, 577, 670, 671.

37. The ALJPO notes Operator No. 4394 – Ronald Phillips performed one-hundred ninety-four (194) tows. The entirety of the evidence shows Operator No. 4394 – Ronald Phillips performed three-hundred fifty-eight (358) tows. Staff's Ex. K, pgs. 73, 74, 75, 76, 77, 84, 85, 86, 87, 88, 89, 93, 94, 106, 107, 108, 109, 110, 112, 113, 114, 116, 119, 124, 126, 127, 128, 130, 140, 147, 149, 151, 152, 153, 154, 156, 157, 161, 163, 164, 168, 169, 174, 177, 178, 181, 182, 186, 194, 195, 196, 197, 198, 204, 209, 211, 212, 214, 215, 217, 218, 219, 220, 221, 222, 226, 227, 230, 237, 239, 240, 241, 245, 247, 248, 249, 250, 251, 257, 258, 261, 263, 266, 267, 271, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 292, 310, 311, 314, 315, 327, 328, 332, 349, 352, 353, 354, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 370, 372, 373, 376, 377, 379, 380, 381, 383, 384, 391, 395, 406, 407, 408, 410, 411, 412, 413, 415, 416, 417, 419, 420, 426, 427, 431, 432, 434, 435, 440, 445, 446, 447, 448, 453, 456, 462, 463, 479, 480, 481, 482, 484, 488, 489, 493, 494, 500, 503, 506, 507, 508, 514, 520, 523, 526, 531, 533, 536, 538, 543, 544, 554, 555, 556, 557, 558, 561, 562, 566, 570, 572, 574, 575, 576, 579.
38. The ALJPO notes Operator No. 2515 – Jose Negron performed one (1) tow. The entirety of the evidence shows Operator No. 2515 – Jose Negron performed two (2) tows. Staff's Ex. J, pgs. 145, 161.
39. The ALJPO notes Operator No. 4190 – Albert Solano performed eight (8) tows. The entirety of the evidence shows Operator No. 4190 – Albert

Solano performed nine (9) tows. Staff's Ex. J, pgs. 240, 241, 244, 245, 246, 248.

The ALJPO fails to consider the entirety of the aforementioned evidence, as well as consider the entirety of this evidence as it relates to Staff's Exhibits A, B, and F concerning the status of Respondent's tow contracts and the status of operator permits. In doing so, the ALJPO fails to weigh the entirety of the record and make a determination concerning the legal significance of these related facts.

Even absent the ALJPO's failure to consider the entirety of the record, the ALJPO's consideration of the record appears to be substantively flawed. The ALJPO's consideration of the record does not appear to include an analysis and determination of the weight and significance of the facts in the record. Rather, the ALJPO appears to dismiss the facts in the record because their significance has not been previously determined, failing to recognize the Commission's independent authority to make determinations of fact and law in this proceeding, as more fully explained in Section E, *infra*.

D. Parties' Positions [IV.]

1. Staff's Position

The ALJPO inaccurately summarizes Staff's position by limiting its basis to the testimony of Sergeant Sulikowski and failing to identify additional sources of evidence whereon Staff premises its argument. In addition to citing to testimony, Staff specifically cites to and bases its conclusions on facts contained in Staff's Exhibits A, B, F, J, and K. These sources not only supplement testimonial evidence but are also independent

sources of evidence.

To accurately reflect Staff's position, Staff respectfully requests the following changes to this section of the ALJPO:

Staff's Position

Staff argues in its post hearing brief that Lincoln's repeated violations and noncompliance with the ICRTVL and Commission Rules show it is not fit to perform the service of a commercial vehicle relocater and to conform to the provisions of the ICRTVL, 625 ILCS 5/18a-100 et seq., and the Commission's Administrative Rules. In summary, Staff asserts the following in support of this argument:

- (1) Based on Staff Exhibits B and J, Respondent conducted unauthorized tows to the 4601 W. Armitage St. Facility for failure to have an effective contract on file with the Commission in violation of 92 Ill. Admin. Code 1710.91(f)(1) fifty-five (55) times between July 24, 2015, and March 23, 2016.
- (2) Based on Staff Exhibits B and J, Respondent conducted unauthorized tows to the 4601 W. Armitage St. Facility for failure to have authorization from the property owner in violation of 92 Ill. Admin. Code 1710.41 one-hundred (100) times between July 24, 2015, and March 23, 2016.
- (3) Based on Staff Exhibits B and J, Respondent conducted unauthorized tows to the 4601 W. Armitage St. Facility for towing vehicles on a patrol basis when its contract was filed as a Call lot in violation of 92 Ill. Admin. Code 1710.91(f)(3) twenty-one (21) times between July 24, 2015, and March 23, 2016.
- (4) Based on Staff Exhibits A and K, Respondent conducted unauthorized tows to the 4882 N. Clark St. Facility for failure to have an effective contract on file with the Commission in violation of 92 Ill. Admin. Code 1710.91(f)(1) two-hundred (200) times between July 24, 2015, and March 23, 2016.
- (5) Based on Staff Exhibits A and K, Respondent conducted unauthorized tows to the 4882 N. Clark St. Facility for failure to have authorization from the property owner in violation of 92 Ill. Admin. Code 1710.41 seventy-nine (79) times between July 24, 2015, and March 23, 2016.
- (6) Based on Staff Exhibits A and K, Respondent conducted unauthorized tows to the 4882 N. Clark St. Facility for towing vehicles on a patrol basis when its contract was filed as a Call lot in violation of 92 Ill. Admin. Code 1710.91(f)(3) nine (9) times between July 24, 2015, and March 23, 2016.
- (7) Based on Staff Exhibits J, K, and F, Respondent used the services

- of an operator without a valid, current operator's permit in violation of Section 18a-300(2) of the ICRTVL three-hundred sixty-nine (369) times between July 24, 2015, and March 23, 2016.
- (8) Respondent violated the ICRTVL and its Administrative Rules a total of eight-hundred thirty-one (831) times.
 - (9) Respondent's pattern and practice of conducting unauthorized relocations harms the public and demonstrates that Lincoln is incompetent and unworthy to hold a relocator's license.
 - (10) While the issuance of an administrative citation is not dispositive of a violation of a particular rule or statute, the administrative citations in evidence are indicative of Respondent's incompetence to properly manage its business operations to ensure regulatory compliance.
 - (11) Thus, given the ongoing pattern and practice of violations found, Lincoln is unfit to hold a Commercial Vehicle Relocator's license pursuant to Section 18a-401 of the ICRTVL.

~~the testimony of Sergeant Sulikowski regarding inconsistencies between the MCIS reports and the 24-hour tow sheets establishes that Protective Parking towed vehicles without property owner authorization, or prior to filing the tow contract with the Commission, or on a patrol basis when the contract was filed as a call lot 462 times between July 24, 2015, and March 23, 2016. Specifically, Staff argues there were 176 unauthorized tows to the Armitage Lot and 286 unauthorized tows to the Clark Lot.~~

~~Staff also argues that Protective Parking used the services of an operator without a valid or current operator's permit 369 times during the relevant time period. The 462 claimed unauthorized tows and the 369 claimed operator violations lead Staff to claim there were a total of 831 violations of the ICRTVL.~~

~~Staff's argues that a "logical syllogism" leads to the inevitable conclusion that a violation of the ICRTVL and Administrative Rules occurred in each instance of an inconsistency. Staff Br. 23. Staff further argues that Protective Parking's pattern and practice of conducting unauthorized relocations support a finding that it is unfit to hold a relocators license.~~

~~Staff does not refer to any of the testimony provided by Officer's Strand, Geisbush, or Investigator Kassal in its post-hearing brief.~~

E. Analysis and Conclusion [V.]

1. The Commission's Independent Authority to Determine Questions of Fact and Law

Pursuant to Section 401 of the Illinois Commercial Relocation of Trespassing Vehicles Law ("ICRTVL"), 625 ILCS 5/18a-401, the Commission may at any time during the term of the license make inquiry into the management, conduct of business, or otherwise determine that the provisions of the ICRTVL and the Commission's Administrative Rules, 92 Ill. Adm. Code 1710.10 et seq., are being observed. On February 24, 2016, the Illinois Commerce Commission ("Commission") ordered that a fitness hearing should be held to inquire into the relocation towing operations of Protective Parking Service Corporation d/b/a Lincoln Towing Service ("Lincoln") to determine whether it is fit, willing, and able properly to perform the service of a commercial vehicle relocater and to conform to the provisions of the ICRTVL, 625 ILCS 5/18a-100 et seq., and the Commission's Administrative Rules.

The ALJPO identifies the "issue presented in this case is whether [Respondent] is fit, willing and able to perform the services of a commercial vehicle relocater and to conform to the provisions of the Illinois Commercial Relocation of Trespassing Vehicles Law and the Commission's Administrative Rules." The ALJPO also notes that the "Commission's analysis of whether a relocater is fit to hold a license is prescribed by Section 1710.22 of the Administrative Rules [and that] Staff and Respondent have stipulated that Protective Parking meets the requirements of the fitness test established by the Section 1710.22(a)(2). 92 Ill. Adm. Code 1710.22 (a)(2)." By determining that the "only other standard to use in evaluating whether Protective Parking is fit to hold a license

is Section 1710.22(a)(1), which allows the Commission to consider the equipment, facilities and storage lots of the applicant; and other facts that may bear on their fitness to hold the license. 92 Ill. Adm. Code 1710.22 (a)(1)," the ALJPO appears to limit or misapprehend the Commission's statutory authority pursuant to Section 401. The ALJPO fails to recognize the Commission's independent statutory authority to determine questions of fact and law within the context of an inquiry pursuant to Section 401. Section 401 explicitly grants the Commission the statutory authority to make inquiry into the management and conduct of business of a relocater and "determine that the provisions of the ICRTVL and the Commission's Rules . . . are being observed." 625 ILCS 5/18a-401. This determination is necessarily premised on the results of the inquiry.

The ALJPO's failure to recognize the Commission's independent authority to determine questions of fact and law, and the ALJPO's failure to weigh the evidence consistent with this authority, renders it unable to reach the conclusion that "Staff's argument that the inconsistencies . . . constitute violations of the [ICRTVL] . . . is not supported by the record." ALJPO, pg. 18. Such a determination would require the ALJPO to weigh the evidence. The ALJPO, however, does not weigh the evidence but summarily dismisses it because its significance was not previously determined. For instance, the ALJPO determines that the inconsistencies between Protective Parking's 24-hour tow sheets and MCIS do not constitute violations of the ICRTVL not on the weight of the evidence but because "[t]here were no citations written or other action to initiate a hearing process on these items and therefore no disposition, no hearing, no finding of violation or finding of no violation, and no disposition by plea agreement. Staff's four witnesses testified that when they have reason to believe a violation has occurred, they will issue

an administrative citation. However, an administrative citation is only an allegation of a violation. Sergeant Sulikowski testified that no investigations were conducted for any of the inconsistencies he identified between the MCIS reports and Protective Parking's 24-hour tow sheets. No citations were written for any of the tows cross-referenced on the 24-hour tow sheets and the MCIS reports containing information about operator permits or relocation contracts by address." ALJPO, pg. 18-19.

This not only abdicates the Commission's independent authority to determine questions of fact and law but also seems to exhibit a failure to recognize that the evidence of alleged violations was discovered during the inquiry ordered by the Commission and the evidence of alleged violations was unknown at the time the alleged violations were occurring. That is, the evidence of alleged violations was not discovered or known during the relevant time period but came to light later as a result of the Commission's inquiry into the management and conduct of business of Protective Parking. Accordingly, it is specious reasoning to dismiss evidence of alleged violations because no administrative citations were issued, or investigations opened, or violations determined concerning the alleged violations at a time when those alleged violations were unknown.

If the ALJPO recognizes that the evidence of alleged violations was not known during the relevant time period but discovered later during the inquiry ordered by the Commission, the ALJPO would seem to be implying that upon discovery of the alleged violations during the inquiry ordered by the Commission, administrative citations could have been issued, investigations opened, and determinations of liability made. If so, the ALJPO errs in practical and legal terms. It would be unworkable as a practical matter. If evidence of violations were discovered during an inquiry ordered by the Commission, is

the inquiry and hearing suspended, administrative citations issued for each alleged violation, separate investigations for each violation conducted, separate hearings for each violations held, and a liability determination made for each violation, upon which the original inquiry and hearing would be resumed? As a legal matter, this again misapprehends the independent authority of the Commission to make determinations of fact and law within the context of a Section 401 inquiry and hearing.

Staff respectfully requests that the following language be included in the "V.

ANALYSIS AND CONCLUSION" section of the ALJPO:

Lincoln argues that what Staff concludes were violations cannot be considered as such because there were "no investigations opened, no citations were written, and no violations were adjudicated by an administrative law judge" and there were no "actual citations, or even actual violations that had been adjudicated." Respondent's Post-Hearing Brief, pgs. 30, 32. Lincoln appears to argue that for the Commission to be able to find that Lincoln violated the Illinois Commercial Relocation of Trespassing Vehicles Law ("ICRTVL") within the context of the fitness hearing there must first have been a previously adjudicated violation for the same conduct. The authority of the Commission during a fitness hearing is not limited in this fashion. The Commission has the authority to make determinations of fact and law in the first instance.

Section 401 of the ICRTVL provides that "the Commission may at any time during the term of the license make inquiry into the management, conduct of business, or otherwise determine that the provisions of the ICRTVL and the Commission's Administrative Rules, 92 Ill. Adm. Code 1710.10 et seq., are being observed." 625 ILCS 5/18a-401. The authority to make inquiry into the management, conduct of business, or otherwise determine that the provisions of the ICRTVL and the Commission's Rules are being observed necessarily includes the authority to actually make that determination. Not only is this plain in the statutory language but without the necessary implication that the Commission is authorized to find that a violation occurred based on its inquiry, the language would be rendered superfluous and the entire section meaningless. In line with this authority, the Commission can weigh Staff's argument and the evidence in support of it and "determine that the provisions of the ICRTVL and the Commission's Rules are being observed," that is, whether a violation occurred.

By way of example applicable to each of Staff's arguments, Staff's Ex. J, pg. 220 (Lincoln's Tow Reports) shows Lincoln towed one vehicle from 225 N. Columbus on January 29, 2016. Staff's Ex. B, pg. 2 (MCIS) shows Lincoln's contract for 225 N. Columbus was cancelled on January 25, 2016, and replaced by another relocater's contract on January 26, 2016. Based on these pieces of evidence, Staff argues that Lincoln violated 92 Ill. Adm. Code 1710.41 by towing a vehicle without property owner or agent authorization on January 29, 2016, from 225 N. Columbus. The Commission will weigh the evidence in support of this conclusion. It will determine whether Staff's Ex. J, pg. 220 (Lincoln's Tow Reports) is credible and, if so, whether it more likely than not leads to the conclusion that Lincoln towed a vehicle on January 29, 2016, from 225 N. Columbus. (Presumably, Lincoln does not dispute its own records.) Similarly, the Commission will determine whether Staff's Ex. B, pg. 2 (MCIS) is credible and, if so, whether it more likely than not leads to the conclusion that Lincoln did not have a contract for 225 N. Columbus on January 29, 2016.

The Commission determines that both of these premises more than likely occurred. Accordingly, these premises lead to the conclusion that Lincoln more than likely violated Section 1710.41 and towed the vehicle without authorization. This analysis follows for each and every one of the eight-hundred thirty-one (831) violations alleged by Staff.

2. Reliability of the Commission's Records

The ALJPO's analysis omits any discussion of the weight given to Exhibits A, B, F, J, and K. The weight of the MCIS reports, in particular, is not addressed in the ALJPO, even though it was a significant point of disagreement between the parties. Respondent's position was that the facts contained in the public records admitted as Staff's Exhibits A, B, and F should be given little weight because the records are unreliable and inaccurate. Staff disagreed, citing to case law holding that public records are generally reliable and accurate. By omitting this discussion in the analysis, the ALJPO implies that the Commission cannot rely on its own records, which it uses on a daily basis in the conduct of its affairs, setting a dangerous precedent.

Staff respectfully requests that the following language be included in the "V.

ANALYSIS AND CONCLUSION" section of the ALJPO:

It is Lincoln's position that the facts the evidence contained in the public records admitted as Staff's Exhibits A, B, and F should be given little weight because the records are unreliable and inaccurate. However, Lincoln fails to meet its burden of persuasion. Public records have justifiably carried a presumption of reliability, and it should be up to the opponent to "demonstrate why a time-tested and carefully considered presumption is not appropriate." Ellis v. International Playtex, Inc., 745 F.2d 292, 301 (4th Cir. 1984). Lincoln offers no evidence and there is no indication that any of the relevant entries from the public records cited to by Staff as a basis for its conclusions contain errors. Instead, Lincoln relies on irrelevant entries that contain apparent errors (certain entries are dated with the year 1899) in an attempt to taint the public records as a whole. Lincoln also misrepresents the testimony of Sergeant Sulikowski when Lincoln states he testified that "the documents are not reliable and not accurate." Sergeant Sulikowski merely agreed that entries with apparent errors, such as ones containing the year of 1899. Sergeant Sulikowski affirmed the general reliability of the information in the exhibits and MCIS.

Furthermore, "[i]t is a well-settled exception to the hearsay rule that records kept by persons in public office, which they are required either by statute or by the nature of the office to maintain in connection with the performance of their official duties, are admissible in evidence and constitute evidence of those matters which are properly required to be maintained and recorded therein. Such records are seen as inherently trustworthy based on the assumptions that public officers will perform their duties and are without motive to falsify." Eastman v. Dep't of Pub. Aid, 178 Ill. App. 3d 993, 997, 534 N.E.2d 458, 461 (2d Dist. 1989); also see People ex rel. Wenzel v. Chicago & NorthWestern Ry. Co., 28 Ill.2d 205, 212, 190 N.E.2d 780 (1963) (referring to Cleary, Handbook of Illinois Evidence, sec. 13.37).

These general principles hold true here as well. The information in MCIS is produced and maintained pursuant to a duty imposed by law on the Transportation Division of the Commission and as required by the nature of the Transportation Division. 625 ILCS 5/18c-1204. The information was entered at or near the time of the events noted in the records and also at a time when those events were not at issue or in dispute. This tends to support the notion that the information is reliable because there was no motive to falsify. Additionally, Lincoln's argument that the information contained in Staff's Exhibits A and B, which contain information of whether a contract has been filed with the Commission, is unreliable and inaccurate

is weaker still because Lincoln inputs this information. Robert Munyon and Ethel Lores maintain E relocater accounts on behalf of Protective Parking Service Corporation. 2-14-18 Tr., pg. 1714, ll. 9-13. The information on the contract summary forms are electronically submitted to the Illinois Commerce Commission through E relocater.

F. Proposed Order [VI.]

The ALJPO states that the "Proposed Order was served on the Parties on June 29, 2018." ALJPO, pg. 19. However, the ALJPO was entered and served on the parties on July 2, 2018. To ensure clarity of the record, Staff respectfully requests the following correction be made to this section of the ALJPO:

VI. PROPOSED ORDER

A Proposed Order was served on the Parties on ~~June 29, 2018~~
July 2, 2018.

G. Findings and Ordering Paragraphs [VII.]

The ALJPO fails to make findings of fact and conclusions of law based on the entirety of the record. Staff respectfully requests that the following changes be made:

VII. COMMISSION FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record, finds that:

- (1) the Commission has jurisdiction over the Respondent and the subject matter of this proceeding, pursuant to in accordance with Section 18a-200(1) of the ICRTVL ~~relocation towing law~~ (625 ILCS 5/18a-200(1);
- (2) the recitals of fact set forth in the prefatory portion of this Order are supported by the evidence of record, and are hereby adopted as findings of fact; ~~The relevant time period for the Commission's investigation of Protective Parking Service Corporation is July 24, 2015, through March 23, 2016;~~
- (3) the facts recited and the conclusions reached in the prefatory portion

of this Order are supported by the record herein and are hereby adopted as findings of fact and conclusions of law during the relevant time period, Officers Strand, Geisbush and Investigator Kassal issued 154 citations to Protective Parking. Of those, 21 received guilty findings, 111 were dismissed; 22 were voluntarily settled without adjudication;

- (4) Respondent conducted unauthorized tows to the 4601 W. Armitage St. Facility for failure to have an effective contract on file with the Commission in violation of 92 Ill. Admin. Code 1710.91(f)(1) fifty-five (55) times between July 24, 2015, and March 23, 2016;
- (5) Respondent conducted unauthorized tows to the 4601 W. Armitage St. Facility for failure to have authorization from the property owner in violation of 92 Ill. Admin. Code 1710.41 one-hundred (100) times between July 24, 2015, and March 23, 2016;
- (6) Respondent conducted unauthorized tows to the 4601 W. Armitage St. Facility for towing vehicles on a patrol basis when its contract was filed as a Call lot in violation of 92 Ill. Admin. Code 1710.91(f)(3) twenty-one (21) times between July 24, 2015, and March 23, 2016;
- (7) Respondent conducted unauthorized tows to the 4882 N. Clark St. Facility for failure to have an effective contract on file with the Commission in violation of 92 Ill. Admin. Code 1710.91(f)(1) two-hundred (200) times between July 24, 2015, and March 23, 2016;
- (8) Respondent conducted unauthorized tows to the 4882 N. Clark St. Facility for failure to have authorization from the property owner in violation of 92 Ill. Admin. Code 1710.41 seventy-nine (79) times between July 24, 2015, and March 23, 2016;
- (9) Respondent conducted unauthorized tows to the 4882 N. Clark St. Facility for towing vehicles on a patrol basis when its contract was filed as a Call lot in violation of 92 Ill. Admin. Code 1710.91(f)(3) nine (9) times between July 24, 2015, and March 23, 2016;
- (10) Respondent used the services of an operator without a valid, current operator's permit in violation of Section 18a-300(2) of the ICRTVL three-hundred sixty-nine (369) times between July 24, 2015, and March 23, 2016;
- (11) Respondent violated the ICRTVL and its Administrative Rules a total of eight-hundred thirty-one (831) times between July 24, 2015, and March 23, 2016~~the relevant time period, Protective Parking Service~~

Corporation towed 9,470 vehicles;

- (12) the evidence shows that Lincoln is unfit to hold a Commercial Vehicle Relocator's License as provided by Section 18a-401 of the ICRTVL by stipulation, Respondent Protective Parking meets the requirements of the fitness test established by 92 Ill. Adm. Code 1710.22(a)(2); and
- (13) the Commercial Vehicle Relocator's License 92 RTV-R held by Lincoln should be immediately revoked, and Lincoln should be ordered to immediately cease and desist from operating a relocation towing business. The evidence supports a finding that Protective Parking is fit, willing and able to provide relocation towing services, in accordance with Chapter 625 of the Illinois Compiled Statutes, Sections 5/18a-400 through 5/18a-501.

WHEREFORE, IT IS HEREBY IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Commercial Vehicle Relocator's License issued to Protective Parking Service Corporation d/b/a Lincoln Towing Service, 92 RTV-R, be immediately REVOKED Protective Parking Service Corporation d/b/a Lincoln Towing Service, with principal office and place of business at 4882 N. Clark Street, Chicago, Cook County, Illinois, is found to be fit, willing, and able to perform a commercial relocation service in intrastate commerce within the State of Illinois under the Illinois Commercial Relocation of Trespassing Vehicles Law (625 ILCS 5/18a-400 et seq.).

IT IS THEREFORE FURTHER ORDERED that Protective Parking Service Corporation d/b/a Lincoln Towing Service, shall immediately cease and desist from operating a relocation towing business and/or from providing any relocation towing services to the general public in the State of Illinois the Commercial Vehicle Relocator's License of Protective Parking Service Corporation d/b/a Lincoln Towing Service shall expire two years from the date of this Order. Upon Applicant filing a verified Application in such form and containing such information as the Commission requires, and accompanied by the required Application fee, the Commission shall renew the Application in two years, unless it has received information of cause not to do so.

IT IS FURTHER ORDERED that the Commission retains jurisdiction over Respondent and the subject-matter of this proceeding for the purpose of issuing such other Orders as it may deem appropriate.

IT IS FURTHER ORDERED that this is a final Order subject to the Administrative Review Law, 735 ILCS 5/3-101 et seq., in accordance with

Chapter 6251LCS 5/18c-2201 through 2206 of the Illinois Commercial Transportation Law.

1. License Expiration Date

The second ordering paragraph of the ALJPO states that "the Commercial Vehicle Relocator's License of Protective Parking Service Corporation d/b/a Lincoln Towing Service shall expire two years from the date of this Order." ALJPO, pg. 20. Staff finds no authority in the ICRTVL for the Commission to renew Respondent's license in this proceeding. Respondent's license was issued by the Commission on July 8, 2015 in Docket No. 92 RTV-R Sub 15. Respondent has a pending renewal application in Docket No. 92 RTV-R Sub 19. To date, that proceeding has not been consolidated with the instant case. Thus, it is improper to effectively grant Respondent's renewal application in this proceeding by setting a new license expiration date.

Staff respectfully requests that the second ordering paragraph regarding the expiration date of Respondent's license be stricken from the ALJPO as follows:

~~IT IS FURTHER ORDERED that the Commercial Vehicle Relocator's License of Protective Parking Service Corporation d/b/a Lincoln Towing Service shall expire two years from the date of this Order. Upon Applicant filing a verified Application in such form and containing such information as the Commission requires, and accompanied by the required Application fee, the Commission shall renew the Application in two years, unless it has received information of cause not to do so.~~

IV. TECHNICAL CORRECTIONS

Staff offers the following technical corrections:

1. Page 4, 4th paragraph: As a Acting Sergeant, he is responsible. . .
2. Page 5, 5th paragraph: Different tows sheets are maintained . . .
3. Page 18, 3rd paragraph: Replace "IRCTVL" with "ICRTVL"
4. Page 18, 7th paragraph: Replace "IRCTVL" with "ICRTVL"
5. Page 20, 2nd paragraph: Replace "(4)" with "(5)"
6. Page 20, 3rd paragraph: Replace "(5)" with "(6)"

V. CONCLUSION

WHEREFORE, for the reasons stated above, Staff respectfully requests that the Commission's order in this proceeding reflect all of Staff's recommendations regarding the fitness of Protective Parking Service Corporation d/b/a Lincoln Towing Service to hold a relocater's license in the State of Illinois under the Illinois Commercial Relocation of Trespassing Vehicles Law.

Respectfully Submitted,


Staff of the Illinois Commerce

Commission

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